



April 7, 2020

Andrew M. Hartnett
Assistant Commissioner for Securities and Regulated Industries
Iowa Insurance Division
Two Ruan Center
601 Locust St., 4th Flr.
Des Moines, IA 50309

Re: Proposed Rule 191-50.104(502) Best Interest Obligations in the Brokerage Business

Dear Mr. Hartnett:

Thank you for taking the time to speak with the Securities Industry and Financial Markets Association (“SIFMA”)¹ and several of its members on March 17. SIFMA greatly appreciates your and Commissioner Ommen’s willingness to engage in a dialogue about some of the issues that we have noted concerning the above-titled proposal (the “Proposal”), and ways that certain provisions might be clarified to address concerns raised by the broker-dealer community. SIFMA also appreciates the opportunity to comment on the Proposal.

SIFMA represents the interests of more than 340 broker-dealers (“BDs”), investment advisers, and asset managers. Many of our members do business and serve retail investors in the state of Iowa. Given the pandemic-related business continuity efforts underway and that Reg BI will soon apply to the conduct of federally-registered BDs providing recommendations to Iowa retail clients, we respectfully request and highly recommend suspending further action on the proposal.

The Securities and Exchange Commission (“SEC”) finalized Regulation Best Interest (“Reg BI”) on June 5, 2019, which created a new, nationwide, heightened standard of conduct for BDs (enforcement of which is currently scheduled to begin June 30). Under Reg BI, a BD making a personalized recommendation to a retail customer in a brokerage account involving a securities transaction or an investment strategy must act in the client’s best interest, without placing its financial or other interest ahead of the client’s interest. That best interest obligation requires BDs to, among other things: (1) disclose all material facts about the scope and terms of the relationship, including fees and costs associated with the client’s account, holdings, and transactions, and all material facts relating to conflicts of interest; (2) exercise diligence, care, and skill, including understanding the risks, reward and costs associated with a recommendation; and (3) mitigate under various circumstances, and eliminate in specific instances, conflicts of interest associated with the recommendation.

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

SIFMA generally supports Reg BI because it: (1) raises the bar from the existing FINRA suitability standard and incorporates fiduciary principles; (2) adds meaningful new investor protections; (3) preserves investor choice and allows investors to continue to receive advice through the brokerage model, while allowing BDs to continue to receive commissions for executing transactions; (4) applies broadly to all retail customer accounts, including retirement accounts; and (5) allows the primary federal securities regulatory agency – the SEC – to enforce this wide-reaching standard across the country. Both the SEC and FINRA will examine BDs regarding their compliance with Regulation Best Interest.

Moreover, while the best interest obligation under Reg BI applies at the time of the recommendation, the obligation is fundamentally consistent with the fiduciary obligation imposed on an investment adviser when providing personalized investment advice about securities to a client. The SEC specifically stated in the Reg BI Adopting Release that “Regulation Best Interest will be substantially similar to key elements of the standard of conduct that applies to investment advisers pursuant to their fiduciary duty under the Advisers Act at the time a recommendation is made,” including that an investment adviser must act in the “best interest of its client at all times.”²

These requirements are substantial and meaningful, and we sincerely appreciate the Division’s efforts to promote uniformity among the states and align its Proposal with elements of Reg BI. Reg BI impacts nearly every aspect of a broker-dealer’s operations, including adviser conduct and compensation, business and product strategy, legal, compliance, supervision, human resources, marketing, technology, management, operations, finance, and risk.

Given the pandemic-related business continuity efforts underway and emerging at this time, we would highly recommend suspending action on the proposal, as there is no compelling need for Iowa to amend its state regulations. Reg BI will apply to the conduct of any federally registered BD providing recommendations to Iowa retail clients soon. By operation of the SEC rule, Iowa residents will receive the manifold protections of that rule, including enforcement by the SEC and FINRA. For this reason – and except to the extent that Iowa has BDs that are only registered with the state – SIFMA urges Iowa to refrain from amending its regulations applicable to federally registered BDs.

However, if the state chooses to move forward, we suggest amending proposed rule 191-50.104(502) by adding Section 191-50.104(4) as follows:

A broker-dealer, or its agent, who is fully compliant with Securities and Exchange Commission Regulation Best Interest (17 C.F.R. §240.151-1), as amended, will be deemed to be compliant with the best interest obligation in subrule 191-50.104(2).

In addition, we recommend the following amendments to 191-50.104(502):

- “Retail customer” means a natural person, or the legal representative of such natural person, who receives a recommendation of any securities transaction or investment strategy involving securities from a broker dealer or agent and uses that recommendation primarily for personal, family, or household purposes.” We suggest adopting the Reg BI use of “retail customer,” rather than “retail investor,” and we added the “use” requirement from the Reg BI definition of “retail customer” found in Section 240.151-1(b)(1)(ii) of the rule. The “use” element is important for Iowa to duplicate if it decides to go forward with its own best interest rule.

² 84 FR 33330 and fn.124, available at: <https://www.federalregister.gov/documents/2019/07/12/2019-12164/regulation-best-interest-the-broker-dealer-standard-of-conduct>.

- Eliminate section 50.104(3)a(5). This requirement is not in Reg BI and would add significant compliance burdens since the BD will need to document on a trade-by-trade basis that it has “reasonably informed” the client of the basis of a recommendation and the potential risks, rewards and costs. The only way to comply with this section, as drafted, is to document that the client was so informed. By contrast, although Reg BI’s Care Obligation requires that the Advisor take into consideration risks, rewards and costs when making a recommendation, the SEC stated that “the Care Obligation does not require BDs to document the basis for a recommendation.”³ Rather, BDs can use “existing compliance measures” to “help evaluate and review for compliance with the Care Obligation.”⁴ We urge Iowa to explicitly acknowledge this aspect of the Reg BI Adopting Release, rather than add the requirement in 50.104(3)a(5) above.
- Explicitly acknowledge in 19-50.104 that the Iowa rule does not create any new private cause of action or right of rescission, which is what the SEC explicitly stated in the Reg BI Adopting Release.⁵

We look forward to the opportunity to discuss this matter further and greatly appreciate your consideration of our recommendations.

Sincerely,



Nancy Donohoe Lancia
Managing Director
SIFMA

³ 84 FR 33378, available at: <https://www.federalregister.gov/documents/2019/07/12/2019-12164/regulation-best-interest-the-broker-dealer-standard-of-conduct>.

⁴ *Id.*

⁵ 84 FR 33327, available at: <https://www.federalregister.gov/documents/2019/07/12/2019-12164/regulation-best-interest-the-broker-dealer-standard-of-conduct>.